

THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

JAKE LEE,

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Plaintiff,

ANSWER

-against-

Civil No. 07-CV 0338C(SR)

ACCESSORIES BY PEAK, RAJESH SHAH,

Defendants.

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Now come Defendants, ACCESSORIES BY PEAK and RAJESH SHAH,  
by and through their attorney, Justin S. White, Esq., and in response to Plaintiff's  
Complaint, allege as follows:

1. The Defendants admit the allegations contained in paragraphs 1, 3, 5, 6, 8,
2. The Defendants deny the allegations contained in paragraphs 8, 9, 13, 14,  
15, 16, 17, 20, 21, 22, 23, 25, 26, and 27.
3. The Defendants deny possessing information sufficient to form a belief  
with respect to the allegations contained in paragraphs 2, 4, 7, 10, 11, 12, 18, 19, 24,

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

4. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the  
Plaintiff has failed to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

5. Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, the  
Court lacks jurisdiction over the subject matter of this action.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

6. Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, the Court lacks jurisdiction over the person of the Defendants, ACCESSORIES BY PEAK, RAJESH SHAH.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

7. Plaintiff's damages, if any, should be barred or reduced as caused by his failure to take reasonable actions to avoid and/or mitigate its damages.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

8. Pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure, this action has been improperly venued and should be dismissed.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,  
THE DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

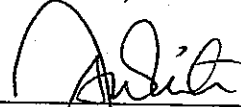
9. This action should be dismissed on the grounds of *forum non conveniens*.

WHEREFORE, defendants, ACCESSORIES BY PEAK, RAJESH SHAH, demand judgment: (1) dismissing the Complaint in the above-entitled action; (2) that in the event plaintiff is entitled to recover, the amount of damages recoverable be diminished in the proportion which the culpable conduct attributable to plaintiff bears to the culpable conduct and negligence which caused such damages; (3) granting costs and disbursements; and (4) for such other, further and different relief which may seem just,

proper and equitable.

Dated: Williamsville, New York  
September 12, 2007

Yours etc.,



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JUSTIN S. WHITE, ESQ.  
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(716) 631-9100

TO: Meredith & Keyhani  
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Plaintiff,

-against-

ACCESSORIES BY PEAK, RAJESH SHAH,

Defendants.

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CERTIFICATE OF SERVICE

Civil No. 07-CV 0338C(SR)

JUSTIN S. WHITE, ESQ., an attorney at law, affirms under the penalties of perjury:

1. That I am over 18 years of age.
2. That I am not a party to this action.
3. That on September 13, 2007, your affiant served a copy of the within Answer upon Dariush Keyhani, Esq., attorney for the Plaintiff, in the following manner, to wit:
4. By e-mailing a PDF formatted version of the Answer to him at dkeyhani@meredithkeyhani.com, and by sending to him a copy thereof upon a CD-ROM disk along with a paper copy of said Answer to his office at 300 Madison Avenue 6<sup>th</sup> Fl., New York, New York 10017 by delivering same in a postage paid envelope and depositing same in a repository maintained by the United States Postal Service.

Affirmed this 13<sup>th</sup> day of September, 2007.

  
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JUSTIN S. WHITE